

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VICTOR RODRIGUEZ,

PETITIONER,

v.

JOHN PALAKOVICH, ET AL.,

RESPONDENTS.

CIVIL ACTION NO.
06-2661

MEMORANDUM/ORDER

August 7, 2007

Currently before the court is a petition for a writ of habeas corpus filed by Victor Rodriguez, a prisoner currently incarcerated at Smithfield Correctional Institution in Huntingdon, Pennsylvania. On November 17, 2006, Magistrate Judge Jacob P. Hart issued a Report and Recommendation (R&R) recommending that this petition be denied with prejudice as time-barred. On December 4, 2006, petitioner moved for an extension of time to file objections to the R&R. Docket # 15. On January 4, 2007, this court granted petitioner's motion, allowing him until February 2, 2007 to file his objections. Over five months have passed since the February 2 deadline set by the court, and petitioner has neither filed any objections nor moved for an additional extension of time.

Accordingly, this matter is now ripe for consideration.

Petitioner was convicted after a bench trial held in June 1998. Though he did not appeal his conviction at the time, his direct appellate rights were subsequently reinstated pursuant to a petition filed under the Pennsylvania Post Conviction Relief Act (“PCRA”). On June 29, 2001, the Pennsylvania Superior Court affirmed petitioner’s conviction and sentence. Petitioner did not appeal. Thus, his conviction became final on July 29, 2001: the expiration of his thirty-day period for seeking review in the Pennsylvania Supreme Court.

On May 30, 2002—305 days after his conviction had become final—petitioner filed a second PCRA petition. This petition was dismissed on January 2, 2003. Petitioner had thirty days—that is, until February 1, 2003—to appeal the dismissal of this petition.

In a third PCRA petition, filed on April 30, 2003, petitioner claimed that he filed a timely appeal from the denial of his second PCRA petition but the PCRA unit had not docketed it. As corroborating evidence, petitioner enclosed a copy of a cash slip allegedly documenting the cost of postage for his appeal. The PCRA court held an evidentiary hearing on petitioner’s claim. After hearing testimony from petitioner, the Corrections Superintendent’s Assistant, and the supervisor of the prison mailroom, the PCRA court concluded that petitioner had forged the cash slip that served as the basis for his third PCRA petition. Accordingly, the PCRA court dismissed this third petition. The

Pennsylvania Supreme Court denied allocatur on May 1, 2006.

In light of the Pennsylvania courts' determination that petitioner did not, in fact, appeal the denial of his second PCRA petition, petitioner's last day to file a federal habeas petition was April 2, 2003: sixty days after the last day on which he could have appealed the denial of his second PCRA petition. Petitioner did not file his habeas petition with this court until June 19, 2006. Thus, the instant petition is untimely.

AND NOW, upon review of the Report and Recommendation of United States Magistrate Judge Jacob P. Hart, and in the absence of any objections from habeas petitioner Victor Rodriguez, it is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. Victor Rodriguez's petition for a writ of habeas corpus is DENIED.
3. A Certificate of Appealability is NOT GRANTED.

BY THE COURT

/s/ Louis H. Pollak

Pollak, J.